

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DUSTIN MICHAEL BRYANT,

Petitioner,

v.

BRANDON KELLY,

Respondent.

Case No. 6:20-cv-01531-JE

ORDER ADOPTING F&R

Lisa Hay, Kristina S. Hellman, and Susan F. Wilk. Office of the Federal Public Defender, 101 SW Main Street, Suite 1700, Portland, OR 97204. Attorneys for Petitioner.

Lynn David Larsen and Samuel A. Kubernick, State of Oregon Department of Justice, Trial Division, 1162 Court Street NE, Salem, OR 97301. Attorneys for Respondent.

IMMERGUT, District Judge.

On October 26, 2022, Magistrate Judge John Jelderks issued his Findings and Recommendation (“F&R”), ECF 44, recommending that the Petition for Writ of Habeas Corpus, ECF 1, be denied and a judgment be entered dismissing this case with prejudice. Judge Jelderks further recommended that this Court decline to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). Petitioner filed objections, ECF 49, and amended objections, ECF 50,

to which Respondent timely filed a response, ECF 51. This Court has reviewed de novo the portion of the F&R to which Petitioner objected. Based on that review, this Court ADOPTS Judge Jelderks' F&R.

STANDARDS

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If a party objects to a magistrate judge's F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, sua sponte" whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

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CONCLUSION

This Court has carefully reviewed de novo the portions of Judge Jelderks' F&R to which Petitioner objected. Judge Jelderks' F&R, ECF 44, is adopted in full. This Court DENIES the Petition for Writ of Habeas Corpus, ECF 1, and dismisses this case with prejudice. This Court also DECLINES to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 1st day of May, 2023.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge